



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute a Contract With the Lodi-Tokay Rotary Club for the 13th Annual Oooh Ahhh Festival to be Held on July 4, 2004 (\$18,000)

MEETING DATE: April 7, 2004

PREPARED BY: Janet L. Hamilton, Management Analyst

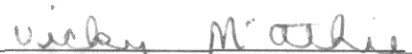
RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute a contract (Exhibit A) with the Lodi-Tokay Rotary Club for the 13th Annual Oooh Ahhh Festival to be held on July 4, 2004, in the amount of \$18,000.

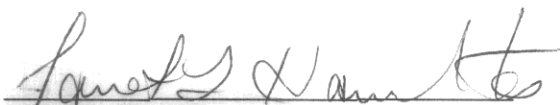
BACKGROUND INFORMATION: The event began in 1991 as a project of Lodi Events, Inc. Local residents that saw a need to provide a safe, fun, family environment for the Independence Day celebration comprised this organization. Lodi Events, Inc. was dissolved in 1993 and the event was turned over to the Lodi-Tokay Rotary Club. It has since become a key fundraiser of the Club. Each year, the Club raises nearly \$30,000 that is distributed to local non-profit organizations and a variety of worthy Rotary supported projects locally, regionally, nationally, and abroad. The Lodi-Tokay Rotary Club has retained the services of WhyteHouse Productions since taking responsibility for the event. Over 200 volunteers, represented by many local non-profit organizations, staff the event.

Revenue sources include sponsorships from local businesses, beverage sales, the Milk Carton Regatta and BBQ Cook-Off entries, a dinner barbecue, vendor sales, and the City of Lodi \$18,000 grant for fireworks (Exhibit A, page 2, paragraph C).

The Oooh Ahhh Festival is a community event that reaches out to children, teens, and their families by providing them with a wholesome, safe, incredibly fun, and low cost way to celebrate our nation's birthday. After twelve years, the event continues to improve and grow. This year, as suggested by the City Manager, the Lodi-Tokay Rotary has included in their budget (Exhibit B) reimbursement to the City for the cost of services provided.

FUNDING: 2003-2004 Community Promotions Budget


Vicky McAthie, Finance Director


Janet L. Hamilton
Management Analyst

APPROVED: 
H. Dixon Flynn, City Manager

Attachments

cc:

Joanne Mounce, Event Chair
Dorean Rice, Event Co-chair
Richard Jones, Lodi-Tokay Rotary President
JoEllen Flemmer, Lodi-Tokay Rotary President-elect

AGREEMENT
USE OF LODI LAKE PARK BY LODI/TOKAY ROTARY CLUB
FOR THE FOURTH OF JULY 2004

PARTIES:

This agreement is made by and between the City of Lodi, a municipal corporation ("City") and Lodi/Tokay Rotary Club ("Club").

RECITALS:

The City is the owner of Lodi Lake Park, which is located on Turner Road in the City of Lodi. Club, for the purpose of coordinating and encouraging certain local events, is desirous of obtaining exclusive use of Lodi Lake Park on July 4, 2004 to stage the "oooH-AHHH Festival" and fireworks display.

NOW, THEREFORE, FOR VALUE RECEIVED, the parties hereto agree to abide by the terms of this writing.

TERMS AND CONDITIONS:

1. Premises: City grants to Club the exclusive right to use Lodi Lake Park for the purpose of putting on certain special events on July 4, 2004.
2. CLUB will perform setup on Thursday, July 3, 2004, between 8:00 a.m.-9:00 p.m. The events will begin at 7:00 a.m. and end at 10:00 p.m. on July 4, 2004. Cleanup will begin on July 5, 2004 from 8:00 a.m. to 12:00 p.m.
3. Consideration: In consideration for the use of said premises Club shall do the following:
 - A. Club will provide staffing, personnel, supplies, and material necessary to put on the events to take place July 4, 2004. Club shall have the right to charge reasonable admission fees to such park for the purposes of raising funds to defray the costs of putting on such events and for the benefit of various community non-profit organizations. Club shall determine appropriate admission charges subject to City approval.

- B. Club shall furnish an accounting of all tickets sold and gross gate and other receipts received. This accounting shall be presented to the Parks and Recreation Department no later than the Friday immediately following the event described in this agreement.
- C. For the purpose of putting on the Fourth of July fireworks display, City shall contribute \$18,000.00 to be applied to the purchase of the pyrotechnic fireworks display. Any additional costs which are required for the provision of such pyrotechnic fireworks display shall be borne by Club, but in no event shall the \$18,000.00 provided by City be used for any purpose other than the direct contracting for the provision of such pyrotechnic fireworks display.
4. Cleanliness upon surrender: It is understood that Club will return Lodi Lake Park in as good and clean condition as when received. Club shall remain liable for all further and additional costs of cleanup should said premises not be surrendered in a good and generally clean condition. It is further understood that Club will arrange for pickup and delivery of all dumpsters or trash containers necessary for the events and for emptying the City trash receptacles located on the premises after the events.
5. Concessions: It is understood that Club shall have the rights to all food concessions and to the dispensing and selling of beer and/or wine. [No hard liquor may be dispensed or sold]. It shall be the responsibility of Club to secure, in writing, all applicable State Alcohol Beverage Control (ABC) licenses and other clearances necessary. Club shall furnish proof of such compliance to City not later than twenty-four (24) hours prior to the holding of such event.
6. Security: It is agreed that the Club shall provide appropriate security personnel and shall be responsible for all costs of fencing Lodi Lake Park which is hereby required. City shall provide additional police security as deemed appropriate by City in its exclusive discretion.

7. Insurance\Hold Harmless: City shall, as owner of the property, be responsible to the extent provided by law for any damages arising from the condition of the property itself, or from the direct and active negligence of City's employees and officers. Club shall save, defend, indemnify and hold harmless City, its officers, agents or employees from all damages, costs or expenses which may arise because of damages or injury caused by Club, its officers, agents, members or employees during the course of its activities on said premises. Such indemnity shall include attorney's fees. Club is required to carry a policy of comprehensive general liability insurance in compliance with all provisions of the "Risk Transfer Requirements for Lease or Use of City of Lodi Facilities ", attached hereto as Exhibit A and incorporated herein by reference. Club shall furnish a certificate of insurance meeting the above-mentioned insurance requirements to the City on or before June 4, 2004.

8. Compliance With Local Ordinances: Club agrees to meet any and all traffic and security requirements as found in local codes or ordinances and to obtain all necessary permits, clearances and approvals from the City Police Chief, City Fire Marshall and any other applicable City, County or State officials prior to conducting any events or other activities on the premises.

9. Sanitation: Club agrees to provide all necessary sanitation facilities including port-a-pots at its sole and exclusive expense. All risk of loss or damage to any such facilities during the events shall lie or rest with Club.

10. Profits: All profits received from admissions charged to such events and/or the sale of food, beverages or merchandise shall be allocated as follows:

After all legitimate expenses for such events are paid, Club by way of its Board of Directors shall, in its sole discretion, distribute profits on the following basis:

- A. Local non-profit organizations or groups which have provided volunteers to staff the events described herein shall receive a share of the profits, to be determined by the number of volunteers each organization provided and the total hours worked;

- B. Although the Board of Directors shall have sole and exclusive discretion to determine the hourly\per capita rate, all non-profit organizations furnishing volunteers shall receive an equal rate;
- C. The Club shall reimburse the City for the cost of service provided as submitted in the attached budget proposal;
- D. After distribution of such profits to local non-profit organizations furnishing volunteers, any remaining profits shall go into the City's general fund.

11. Responsibility for Debts: Club shall be solely responsible for all costs associated with the events, and shall in no way pledge the credit of City for any goods, services or supplies used for the events described herein. Club shall not encumber nor hypothecate any City property as security for debts and shall defend and indemnify City for any and all claims by any supplier of goods, services or supplies for such events, or assignees thereunder.

12. Entire Agreement: This document contains the entire agreement between the parties. Any inconsistent prior or contemporaneous oral terms are void and shall not be used to modify or supplement this written agreement.

IN WITNESS WHEREOF, the parties hereto, being in agreement with the terms of this writing, have set their hands as follows:

CITY OF LODI, a municipal corporation:

LODI/TOKAY ROTARY CLUB:

By: _____
H. Dixon Flynn
City Manager

By: _____
Joanne Mounce
Chairperson

Attest:

Approved as to form:

Susan J. Blackston
City Clerk

D. Stephen Schwabauer
Interim City Attorney

4:29 PM
08/25/03
Cash Basis

Oooh Ahhh Festival
Profit & Loss Budget Overview
September 2003 through August 2004

		Sep '03 - Aug 04
Ordinary Income/Expense		
Income		
INCOME		
Bath Tub Regatta Sales	350.00	
BBQ Cook-Off Sales	125.00	
Booth Sales	5,970.00	
Day of Event Revenue	60,000.00	
Firecracker BBQ	3,200.00	
Interest	113.56	
Raffle	500.00	
Sponsorship Sales	40,000.00	*includes City grant
Total INCOME	110,258.56	
Total Income	110,258.56	
Expense		
EXPENSES		
Advertising	2,000.00	
BBQ	750.00	
City of Lodi Services	10,500.00	
Consumables	4,900.00	
Event Management	10,200.00	
Event Supplies	1,550.00	
Fireworks	20,000.00	
Games & Rides	7,000.00	
Meeting Expense	600.00	
Merchandise Expense	800.00	
Office Supplies	700.00	
Performer	2,000.00	
Permits	534.00	
Rental	17,500.00	
Security	500.00	
Start Up Cash - Day of Event	3,500.00	
Storage	360.00	
Total EXPENSES	83,394.00	
Total Expense	83,394.00	
Net Ordinary Income	26,864.56	
Other Income/Expense		
Other Expense		
DONATIONS		
Donations to Non Profits	8,000.00	
Transfer to LTRC	10,000.00	
Total DONATIONS	18,000.00	

4:29 PM
08/25/03
Cash Basis

Oooh Ahhh Festival
Profit & Loss Budget Overview
September 2003 through August 2004

	<u>Sep '03 - Aug 04</u>
Total Other Expense	<u>18,000.00</u>
Net Other Income	<u>(18,000.00)</u>
Net Income	<u><u>8,864.56</u></u>

RESOLUTION NO. 2004-63

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A CONTRACT WITH
LODI-TOKAY ROTARY CLUB FOR THE 13TH ANNUAL
OOOH AHHH FESTIVAL HELD JULY 4, 2004

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an agreement with the Lodi-Tokay Rotary Club for the "Oooh Ahhh Festival" held July 4, 2004; and

BE IT FURTHER RESOLVED that the City Manager is authorized to provide funds in the amount \$18,000.00 for this event.

Dated: April 7, 2004

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I hereby certify that Resolution No. 2004-63 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

filed 4-7-04

WhyteHouse Productions
PO Box 1238
Lodi, CA 95241-1238
209.368.4626 phone/fax
steve@win4usa.com

WHYTEHOUSE
Productions

TO: Mayor Hansen and City Council Members
City of Lodi
FR: Steven Whyte, WhyteHouses Productions & Lodi Tokay Rotary Club
DT: April 7, 2004

RE: Modification of Agreement for Oooh Ahhh Festival on July 4, 2004

Mayor Hansen and City Council Members,

On behalf of the Lodi Tokay Rotary Club, we are very grateful for your continued support of the annual 4th of July celebration known as The Oooh Ahhh Festival at Lodi Lake Park.

The City of Lodi funding of the fireworks is before you on the consent calendar. I unfortunately am asking that the item be pulled so that we may discuss a clause in the agreement that we want to have removed.

Upon reviewing the agreement, I came across paragraph 10 "Profits" sub item (D).

"After distribution of such profits to local non-profit organizations furnishing volunteers, any remaining profits shall go into the City's general fund."

I have been informed that this provision has appeared in previous agreements. It was never questioned or noticed by club members and has never been enforced by the City of Lodi.

I can only assume that this provision is a misunderstanding, since if enforced; there will not be any proceeds for Lodi Tokay Rotary Club.

Our club raises approximately \$20,000 to \$25,000 after all expenses are paid. These net proceeds are then used to make donations / grants to local non-profit organizations and used for other benevolent projects, such as the tree project on Ham Lane.

The Oooh Ahhh Festival is the main fundraiser of Lodi Tokay Rotary Club. The Oooh Ahhh Festival is also a source of great pride for the community.

If provision 10(D) remains in the agreement and enforced by the City of Lodi, Lodi Tokay Rotary will not raise any proceeds and will not be able to contribute to worthy charitable organizations and special projects.

I appeal to you to approve the funding of \$18,000 and the agreement with provision 10(D) stricken.

Respectfully,
WhyteHouse Productions

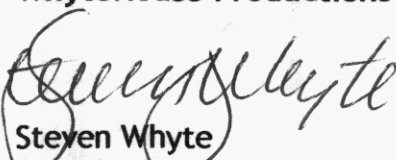

Steven Whyte
President

EXHIBIT A

CITY OF LODI RISK TRANSFER REQUIREMENTS FOR LEASE OR USE OF CITY FACILITIES

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance, and must complete a formal application or permit. Processing of applications is handled by the department responsible for the facility.
2. A duplicate or certificate of insurance shall be delivered to the City 30 DAYS prior to the use of City facilities.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is as lease consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location or and a description of the function that it is insuring.
5. If the City has not approved the insurance certificate and appropriate application or permit prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the insurance certificate. (The City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees, must be named the additional insured, not Hutchins Street Square, Parks and Recreation, or another individual or department).
9. The address of the City of Lodi must be shown along with number 8 above, (i.e. Additional Insured, City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees, 221 W. Pine Street, Lodi, Ca. 95240) This must be the street address NOT the post office box.
10. In addition to the Additional Names Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language or reasonable facsimile:
"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.
12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above and/or if the City is not named as an additional insured on the insurance certificate, not in conformance with the requirements of paragraph 2 above, the City will not accept the insurance certificate, and a corrected certificate must be furnished to the City prior to any use of City facilities.
14. If a corrected insurance certificate and appropriate application or permit is not received by the City of Lodi prior to the use of City facilities, the City will not allow the facilities to be used, and any agreement or contract entered into will become null and void.